HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G. BHAVANI PRASAD

WRIT PETITION NO. 5848 OF 2006

BETWEEN:

Voice of Telangana
represented by its President Lingala Pandu Ranga Reddy,
Hyderabad.

.....**Petitioner**

And

Union of India rep. by the Secretary, Ministry of Home Affairs,
Government of India, New Delhi & another

.....**Respondents**

:: O R D E R ::

Counsel for the Petitioner : Shri V. Hanumanth Rao

Counsel for Respondent No.1 : Shri A. Rajasekhar Reddy

Counsel for Respondent No.2 : Government Pleader for General Administration

Dated: 03-04-2006

Per G.S. SINGHVI, CJ

In this petition filed in the name of public interest litigation, the petitioner has prayed for striking down Articles 168 and 171(3)(a)(b)(c)(d)(e) of the Constitution of India and the Andhra Pradesh Legislative Council Act No.1 of 2006 (for short 'the 2006 Act').

The petitioner claims to be a society engaged in social service. It's president-Shri Lingala Pandu Ranga Reddy is said to be an Ex-serviceman, who served Indian Army in various operations, including Indo-Pak war in 1965 and Kargil operations in 1971. He is said to have started IAS guidance programme with collaboration of Rao's IAS Study Circle, New Delhi for helping candidates aspiring to join civil services. He has averred that the Legislative Council created in the State of Andhra Pradesh in 1957 was abolished by the Andhra Pradesh Legislative Council Act, 1985 because, it was realised that existence of that institution was superfluous, purposeless and expensive-appendage. He has further averred that the State has done well in last twenty years without Legislative Council, but at the instance of interested parties, the Parliament has recently passed the 2006 Act for revival of the Legislative Council. According to the petitioner, the 2006 Act has been enacted by the Parliament without application of mind and without there being any cogent reason for revival/reconstitution of the Legislative Council. He has questioned Article 171(3) by describing it as arbitrary, discriminatory, archaic and anachronistic in its nature.

We have heard Shri V. Hanumantha Rao, Advocate for the petitioner. He argued that revival of the Legislative Council in the

State is an anathema to the Constitution because the same is not going to serve any public purpose. Learned counsel emphasised that for the last twenty years, the State has been able to do without Legislative Council and, therefore, revival thereof is bound to be an unnecessary burden on the public exchequer. Shri Rao then argued that the Parliament cannot enact law for revival of the defunct Legislative Council and thereby place huge financial burden on the State exchequer and people of the State. Learned counsel also questioned the validity of Article 171 by arguing that no guiding principles have been laid down for selection of the members of the Legislative Council. He submitted that Legislative Council is merely an adversary body and, therefore, its existence or non-existence is irrelevant to the people of the State.

We have thoughtfully considered the arguments of the learned counsel, but have not felt persuaded to agree with him. Articles 168, 169 and 171 of the Constitution of India, which have bearing on the decision of this petition, read as under:

> **"Art.168. Constitution of Legislatures in States**
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> (1) For every State there shall be a legislature which shall consist of the Governor, and
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> (a) in the States of Andhra Pradesh, Bihar, Madhya Pradesh, Madras, Maharashtra, Karnataka and Uttar Pradesh, two Houses;
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> (b) in other States, one House.
>
> (2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly.
>
> **Art. 169. Abolition or creation of Legislative Councils in States**
>
> (1) Notwithstanding anything in article 168, Parliament may by law provide for the abolition of

the Legislative Council of a State having such a Council, or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.

(2) Any law referred to in clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary.

(3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

Art.171. Composition of the Legislative Councils

(1) The total number of members in the Legislative Council of a State having such a Council shall not exceed one-third of the total number of members in the Legislative Assembly of that State:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of Members of the Legislative Council of a State—

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the

State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(d) as nearly as may be, one–third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(e) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5).

(4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote.

(5) The members to be nominated by the Governor under sub-clause (e) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:-

Literature, science, art, co-operative movement and social service."

A careful reading of the above re-produced provisions of the Constitution shows that Article 168 envisages two Houses of

the Legislature for some States and one House for the remaining States. The State of Andhra Pradesh, which came into existence with effect from 01.11.1956, falls in the first category. As per Article 168(2), one of the two Houses of the Legislature of a State is known as Legislative Council and the other as Legislative Assembly. Article 169, which begins with non-obstante clause, empowers the Parliament to enact law for abolition of the Legislative Council of a State or for creation of such a Council in a State having no such Council provided that the Legislative Assembly of the State passes resolution to that effect by a majority of total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting. Article 170 provides for composition of Legislative Assemblies and Article 171 provides for composition of Legislative Councils.

The above analysis of the constitutional provisions makes it clear that the Parliament is vested with the exclusive prerogative to enact law for abolition of the Legislative Council of a State or for creation of such a Council in a State having no such Council provided a resolution to that effect is passed by the Legislative Assembly of that State with the requisite majority. The Court cannot go into the wisdom of the Parliament to enact law for creation of the Legislative Council in a State. The allegations of mala fide or non-application of mind cannot be attributed to the Parliament because, it acts on the basis of resolution passed by the Legislative Assembly of the State. To put it differently, the question whether a State should have Legislative Council, primarily, is left to be decided by the Legislative Assembly of the State which, as mentioned above, is required to pass resolution

with the requisite majority for facilitating creation of the Legislative Council. The Court cannot strike down the resolution passed by the Legislative Assembly or the law enacted by the Parliament on the ground that creation of Legislative Council may result in additional expenditure or on the ground that the resolutions passed by it are not enforceable or are not binding. The framers of the Constitution have, in their wisdom, thought it proper to create bicameral Legislature at the Centre and made provision for creation of such Legislature in the State and we do not find any valid ground to invalidate the exercise of power under Article 169 simply because, the persons like petitioner feel that it would be wasteful expenditure.

With the above observations, the writ petition is dismissed.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

03.04.2006
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